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10/627,017	07/25/2003	John Mendonca	200209600-1	3688

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EXAMINER	
OKORONKWO, CHINWENDU C	
ART UNIT	PAPER NUMBER
2136	

NOTIFICATION DATE	DELIVERY MODE
08/05/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/627,017	MENDONCA ET AL.	
	Examiner	Art Unit	
	CHINWENDU C. OKORONKWO	2136	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 May 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Remarks/Arguments

1. Applicant's arguments with respect to the rejection of pending claims have been fully considered but they are not persuasive.

1.1 In response to Applicant argument that the Shanklin et al. (U.S. Patent No. 6,578,147 B1) (herein as "Shanklin") reference does not teach or suggest any of the limitations of claim 1 including:

- providing … so that utilization of each network intrusion detection system can be based on demand for said network intrusion detection systems in said dynamic data center;
- receiving a monitoring policy and a plurality of monitoring points to be monitored on a network with any of said network intrusion detection systems; and
- and automatically arranging the monitoring of said monitoring points using said network intrusion detection systems and said monitoring policy.

Regarding the first limitation, the Examiner directs the Applicant to column 2 lines 48-50 which recites "multiple intrusion detection sensors are used at the entry point to the network, specifically, at an 'internetworking device' such as a router or a switch" and column 2 lines 54-58 which recites "internetworking device, whether a router or switch, is processor-based and includes load balancing

programming, which controls how packets are distributed from the internetworking device to the sensors for processing."

Regarding the second limitation, the Examiner directs the Applicant to column 2 lines 1-13 in which Shanklin et al. discloses the claimed "monitoring policy" as being inclusive to the IDS sensors, which comprise: "packet load to the sensors that is 'load balanced', such that said packets are distributed at least at a session-based level [or] packet-based level … the results of the detection performed by the sensors and the network analyzer are used to determine if there is an attempt to gain unauthorized access to the network."

Regarding the third limitation, the directs the Applicant to column 5 lines 19-20 in which Shanklin et al. again discloses the "monitoring points" as being inclusive to the IDS sensors, which comprise "load balancing unit, which distributes packet among the sensors," which can be "session-based (column 5 line 22)" or "network-based (column 5 line 58)."

1.2 The Examiner further maintains that the claimed "dynamic data center" is indeed disclosed by the reference of record, pointing to the definition of what the claimed "dynamic data center" is described as in the Specification, submitted during the filing of this (on 07/25/2003). In the Specification the Applicant describes the "dynamic data center" as having "a controller 10, a graphical user interface (GUI) 20, a database 30, a

plurality of internal networks 40, and a communication link 80 to communicate with external networks (e.g., the Internet)." The Examiner submits that the Figures 1-6 of Shanklin provides a disclosure of the claimed "dynamic data center." Specifically the claimed "controller" is equated to the disclosed "switching control" within the Session Load Balancer (see Figure 4). The claimed "graphical user interface" is equated to the inherent graphical user interface of the IDS manager station (see Figure 1 and column 3 lines 55-58). The claimed "database" is equated to the database within the server which is a gateway to network resources (see Figure 2 and column 3 lines 51-54). The claimed "plurality of internal networks" is equated to the local networks of column 6 lines 57-55. The claimed "communication link" is equated to the disclosed link to the "External Network" of Figures 1-3. Therefore the Examiner understands the Shanklin reference to disclose the claimed "dynamic data center" as defined, thus the rejections of claims 1-20 are maintained.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being disclosed by Shanklin et al. (U.S. Patent No. 6,578,147 B1).

Regarding claims 1, 8 and 15, Shanklin et al., discloses a method, system and a computer readable medium comprising computer-executable instructions stored therein for managing utilization of network intrusion detection systems in a dynamic data center, said method comprising: providing a plurality of network intrusion detection systems, each being networked so that utilization of each network intrusion detection system can be based on demand for said network intrusion detection systems in said dynamic data center (column 2 lines 48-50 – "Multiple intrusion detection sensors are used at the entry point to the network, specifically, at an 'internetworking device' such as a router or a switch" and column 2 lines 54-58 – "Internetworking device, whether a router or switch, is processor-based and includes load balancing programming, which controls how packets are distributed from the internetworking device to the sensors for processing"); receiving a monitoring policy and a plurality of monitoring points to be monitored on a network with any of said network intrusion detection systems (column 2 lines 1-13 – Shanklin et al. discloses the claimed "monitoring policy" as being inclusive to the IDS sensors, which comprise: "packet load to the sensors that is 'load balanced', such that said packets are distributed at least at a session-based level [or] packet-based level … the results of the detection performed by the sensors and the network analyzer are used to determine if

there is an attempt to gain unauthorized access to the network"); and automatically arranging the monitoring of said monitoring points using said network intrusion detection systems and said monitoring policy (column 5 lines 19-20 – Shanklin et al. again discloses the "monitoring points" as being inclusive to the IDS sensors, which comprise "load balancing unit, which distributes packet among the sensors," which can be "session-based (column 5 line 22)" or "network-based (column 5 line 58)").

> Shanklin et al. recites intrusion detection sensors which "autonomously comprise the entire intrusion detection system (column 3 lines 58-62). Therefore, the Examiner understands the disclosed "multiple intrusion detection sensors" to comprise the function of claimed plurality of network intrusion detection system, monitoring points and monitoring policy. Thus the disclosure of Shanklin et al. highlights the various elements and components of the disclosed "multiple intrusion detection sensors are used at the entry point to the network, specifically, at an 'internetworking device' such as a router or a switch."

Regarding claims 2, 9 and 16, Shanklin et al., discloses a method, system and a computer readable medium comprising computer-executable instructions stored therein for automatically arranging the monitoring of said monitoring points includes: automatically configuring a plurality of network resources to provide

network communication data from said monitoring points to a plurality of available network intrusion detection systems from said network intrusion detection systems (column 3 lines 59-65 – "[sensors] might forward alarms to station 10c, which may then alert the sytem manager or automatically take action"); and automatically configuring said available network intrusion detection systems to receive said network communication data based on said monitoring policy (column 2 lines 1-7 – "packet load to the sensors that is 'load balanced', such that said packets are distributed at least at a session-based level [or] packet-based level … the results of the detection performed by the sensors and the network analyzer are used to determine if there is an attempt to gain unauthorized access to the network).

Regarding claim 3, Shanklin et al., discloses a method, system and a computer readable medium comprising computer-executable instructions stored therein for automatically arranging the monitoring of said monitoring points further includes: automatically increasing a number of particular network intrusion detection systems receiving said network communication data from a particular monitoring point by selecting additional available network intrusion detection systems if said network communication data exceeds a capacity of said particular network intrusion detection systems (column 2 lines 1-18 and column 3 lines 57-65 – the claimed automatically increasing IDS systems is found in the disclosure of the "solution provided by the invention [being] easily scalable" in size from large

scale to small scale).

Regarding claims 4, 11 and 18, Shanklin et al., a method, system and a computer readable medium comprising computer-executable instructions stored therein for automatically arranging the monitoring of said monitoring points further includes: automatically decreasing a number of particular network intrusion detection systems receiving said network communication data from a particular monitoring point by releasing any of said particular network intrusion detection systems to said available network intrusion detection systems if said network communication data is below a predetermined threshold of a capacity of said particular network intrusion detection systems (column 2 lines 1-18 and column 3 lines 57-65 – the claimed automatically decreasing IDS systems is found in the disclosure of the "solution provided by the invention [being] easily scalable" in size from large scale to small scale

Regarding claims 5, 12 and 19, Shanklin et al., discloses a method, system and a computer readable medium comprising computer-executable instructions stored therein for which resources include one of a firewall, a gateway system, a network switch, and a network router (column1 lines 19-28 or column 3 lines 23-29).

Regarding claims 6 and 13, Shanklin et al., discloses a method, system and a

computer readable medium comprising computer-executable instructions stored therein for receiving a monitoring policy and a plurality of monitoring points to be monitored includes: providing a graphical user interface to receive said monitoring policy and said plurality of monitoring points to be monitored (column 3 lines 54-57 – "user interface").

Regarding claims 7, 14, 20, Shanklin et al., discloses a method, system and a computer readable medium comprising computer-executable instructions stored therein for which dynamic data center is a utility data center (column 1 lines 19-26).

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHINWENDU C. OKORONKWO whose telephone number is (571)272-2662. The examiner can normally be reached on MWF 2:30 - 6:00, TR 9:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on (571) 272 4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. C. O./

Examiner, Art Unit 2136

/Nasser G Moazzami/

Supervisory Patent Examiner, Art Unit 2136